

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA,

v.

SAMUEL WAYNE ROSENBAUM,

Defendant.

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Case No. 1:15CR00003-018

OPINION AND ORDER

By: James P. Jones
United States District Judge

Samuel Rosenbaum, Pro Se Movant.

The defendant has filed a pro se motion asking for a reduction in his sentence under Amendment 794 to the U.S. Sentencing Guideline Manual (“USSG”). Amendment 794, effective November 1, 2015, related to USSG § 3B1.2 (Mitigating Role). The defendant was sentenced by this court on December 10, 2015.

The defendant contends that Amendment 794 has been made retroactive and asks this court to consider whether he is entitled to a sentence reduction. However, Amendment 794 has been applied retroactively in a direct appeal, not a collateral motion, as here. *See United States v. Quintero-Leyva*, 823 F.3d 519, 522 (9th Cir. 2016). In the absence of a direct appeal, this type of claim must be brought under 18 U.S.C. § 3582. *United States v. Hunley*, Nos. 7:14CR00050, 7:16CV81151, 2016 WL 4523417, at *1 (W.D. Va. Aug. 26, 2016).

Amendment 794 has not been designated in USSG § 1B1.10(d) by the Sentencing Commission to apply retroactively pursuant to 18 U.S.C. § 3582(c)(2). Accordingly, the defendant is not entitled to a modification of his sentence. His motion (ECF No. 865) is thus DENIED.

It is so **ORDERED**.

ENTER: October 19, 2016

/s/ James P. Jones
United States District Judge